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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,346

03/25/2004

Alexander Medvedev

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08/02/2006

BUCHANAN, INGERSOLL & ROONEY PC
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EXAMINER

BOCKELMAN, MARK

ART UNIT

PAPER NUMBER

3766

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,346

Applicant(s)

MEDVEDEV, ALEXANDER

Examiner

Mark W. Bockelman

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 19-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 7-24-2006.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

Applicant's election with traverse of group II in the reply filed on 5-1-2006 is acknowledged. The traversal is on the ground(s) that the inventions form a common inventive concept. . This is not found persuasive because the inventions cover different scopes. The examiner has decided to include the invention of group I in the examination and as noted below, the method claims are allowable wherein the apparatus claims are not as the result of their different scope.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10- 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Benkowski et al. USPN 5,947,892. Benkowski et al teach a blood pump for pumping blood through a patient that may be controlled by either a microcontroller or a speed adjust pot (column 10 lines18-26), i.e. manually. Applicant's claims indicate that the controller is capable of setting the speed based upon the ratio of the heart rate to the pump speed. The examiner considers any pump with a manual means for adjusting pump speed to be capable of performing such a function since the resulting selected speed based upon a calculation performed manually is no different from the same speed based upon some other criteria. Unless the controller itself performs the task of

Art Unit: 3766

determining the speed and heart rate and taking the ratio, there is no structural difference, only that the reference be capable of controlling the pump at that speed, which Benkowski is capable of doing. Benkiwski is but one of many manually controllable pumps. Applicant's equations in dependent claims are calculations not necessary performed by the controller as claimed and are thus considered an intended use and not adding any structure to the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Benkowski et al USPN 5,947,892 in view of Brugger et al USPN 7,004,924. Applicant differs from Benkowski in reciting a threshold comparison performed by the controller to adjust pump speed. Brugger et al teach the use of a set point (threshold) for adjusting pump speed. When the pump speed varies significantly as compared to the set point the speed is adjusted.

Allowable Subject Matter

Claims 1-9 are allowed.

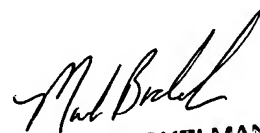
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W. Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Friday 10:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272 -6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWB

July 23, 2006


MARK BOCKELMAN
PRIMARY EXAMINER